

**REMARKS**

Applicants acknowledge receipt of the Office Action mailed March 13, 2007.

In the Office Action, the Examiner objected to the disclosure; rejected claims 56 and 57 under 35 U.S.C. § 112, second paragraph; and rejected claims 53-57 under 35 U.S.C. § 103(a) as being unpatentable over *Hyodo* (U.S. Patent No. 5,589,045) in view of *Beaty et al.* (U.S. Patent No. 6,645,368).

By this Amendment, Applicants amend the specification and claims 53, 54, and 56, and add new claim 58. Before entry of this Amendment, claims 53-57 were pending in this application. After entry of this Amendment, claims 53-58 will be pending in this application. Of these claims, claim 53 is independent.

The originally-filed specification, claims, abstract, and drawings fully support the amendments to the specification and claims 53, 54, and 56. No new matter has been introduced.

Applicants respectfully traverse the Examiner's objection and rejections for at least the reasons discussed below.

**I. OBJECTIONS TO THE DISCLOSURE**

The disclosure stands object to because of a few informalities. Specifically, the Examiner asserts, "[p]age 2, line 3, after 'November 1, 2002,' insert --now U.S. Patent No. 6,743,635,--." Page 26, line 6, 'preferred the check' should be changed to --preferred check--." (*Office Action*, p. 2, paragraph 1). Applicants respectfully submit that the objections to the disclosure have been rendered moot.

## **II. 35 U.S.C. § 112, SECOND PARAGRAPH, REJECTION**

Claims 56 and 57 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner asserts, “[c]laims 56 and 57 recite the limitation ‘said blood sample’...[and] recite the limitation ‘said sample chamber’...There is insufficient antecedent basis for [these limitations] in the claims.” (*Office Action*, p. 2, paragraphs 3-5). Applicants respectfully submit that the rejection of claims 56 and 57 under 35 U.S.C. § 112, second paragraph, has been rendered moot.

## **III. 35 U.S.C. § 103(a) REJECTION**

Claims 53-57 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hyodo* in view of *Beaty*. Applicants respectfully disagree with the Examiner’s arguments and conclusions and submit that independent claim 53 patentably distinguishes over *Hyodo* and *Beaty* at least for the reasons set forth below.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), each of three requirements must be met. First, the reference or references, taken alone or combined, must teach or suggest each and every element recited in the claims. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references in a manner resulting in the claimed invention. Third, a reasonable expectation of success must exist. Moreover, each of the three requirements must “be found in the prior art, and not be based on applicant’s disclosure.” See M.P.E.P. §2143, 8th ed., February 2003.

Amended claim 53 recites, *inter alia*:

“a data acquisition system...including at least a first digital-to-analog converter, a second digital-to-analog converter, a multiplexer, and at least one analog-to-digital converter, wherein the first and second digital-to-analog converters specify the first and second voltages for the working and counter electrodes and the fill-detect electrodes, respectively, and wherein the multiplexer selects an input to the at least one analog-to-digital converter.”

*Hyodo* appears to disclose a portable blood sugar value-measuring apparatus 1 including a connector 3 into which various electrodes 45, such as a measuring electrode 4 for measuring a blood sugar value, are inserted. (*Hyodo*, col. 4, ll. 12-18). “The connector 3 is connected with the input side of a detecting circuit 52 which detects whether or not the electrode 45 has been mounted on the connector 3...” (*Id.* at col. 4, ll. 31-33). *Hyodo* further includes an A/D converter 54. (*Id.* at Fig. 8).

As admitted by the Examiner, however, “*Hyodo*...does not explicitly disclose the meter comprising a digital-to-analog converter.” (*Office Action*, p. 4, ll. 9-10). In addition, *Hyodo* fails to disclose a data acquisition system including a second digital-to-analog converter and a multiplexer, wherein the first and second digital-to-analog converters specify the first and second voltages for working and counter electrodes and fill-detect electrodes, respectively, and wherein the multiplexer selects an input to an analog-to-digital converter.

As supported by Applicants’ specification at page 40, line 13 - page 41, line 10, “[t]o generate selected analog voltages to apply to working electrode 22 and fill-detect electrode 28, DAS 420 includes a first DAC 444 and a second DAC 446, respectively...To measure the currents through working electrode 22 and fill-detect

anode 28, DAS 420 includes an ADC 448 and multiplexers (MUXes) 450 and 452. MUXes 450 and 452 are able to select the input of ADC 448...”

Accordingly, in order to cure the deficiencies of *Hyodo*, the Examiner relies on *Beaty* and alleges “*Beaty*...teaches a meter (32) comprising a digital-to-analog converter (50).” (*Id.* at p. 4, line 11).

*Beaty*, however, fails to disclose, teach or suggest the combination as presently claimed, and thus fails to remedy the deficiencies of *Hyodo*.

Accordingly, in view of the above described deficiencies of *Hyodo* and *Beaty*, claim 53 is allowable over the Examiner’s proposed combination of the references, and claims 54-57 are allowable at least due to their corresponding dependence from claim 53. Accordingly, Applicants respectfully request that the rejection of claims 53-57 under 35 U.S.C. § 103(a) be withdrawn. In addition, new claim 58 is allowable at least due to its dependence from independent claim 53.

#### **IV. CONCLUSION**

Applicants respectfully submit that independent claim 53 is in condition for allowance. In addition, claims 54-57 are in condition for allowance at least due to their dependence from claim 53.


The Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

A handwritten signature in black ink, appearing to be 'ERACITI', written over a horizontal line.

Dated: June 8, 2007

By: \_\_\_\_\_

Eric P. Raciti  
Reg. No. 41,475